

Comparing the evaluation and development of the quality of Justice in Finland, France, Hungary, Italy and The Netherlands

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1. Introduction

The comparative report is based on the five national reports drafted as part of the research project “Handle with care: Assessing and designing methods for evaluation and development of the quality of justice”: namely, the Finnish, French, Hungarian, Italian, and Dutch National Reports. One of the project’s aims is to identify national practices that could be implemented in other countries in order to improve the quality of the services provided by courts. For that reason, we had to understand what kind of practices exist and what kind of innovative practices were emerging. Five countries were chosen to represent an interesting sample. This report uses the findings of the national reports to identify trends in national approaches and experiences in evaluating and promoting justice quality. It does not seek to assess or evaluate each national system comprehensively; the data collected at national level in each of the five countries are compared to identify common trends and diverging paths, outliers, and weaknesses as well as to verify whether the systems in place are comprehensive, reliable, coherent, and effective venues to evaluate and improve the quality of justice.

2. Methodology

This comparative report’s objective is to reveal common and divergent approaches, problems, and solutions in place at national level to evaluate and promote quality of justice at individual, court and national justice system level. A comparative analysis was deemed to be the most appropriate tool for this purpose. This choice relies on the principle that judges, courts and justice systems fulfil the same or a similar function in all the five countries. In view of the organisational differences and particularities of each national justice system, a functional comparative approach is followed: namely, activities that fulfil the same or similar tasks or functions are considered to be comparable. According to Zweigert and Kötz, ‘the legal system of every society faces essentially the same problems, and solves these problems by quite different means though very often with similar results’¹.

Although Finland, France, Hungary, Italy, and the Netherlands have different judicial cultures, they are all based on the model of the “Western democracy”². Their political and administrative environments are obviously diverse as the National Reports indicate, but nonetheless they share important common points. All countries are members of the European Union and the Council of Europe, and consequently share a significant number of common legal and professional values. Furthermore, courts are under significant pressure to manage their caseload: this pressure is due to an important activity of referring cases to the courts by the citizens, and to a certain extent they face difficulties with regard to the length of the delays related to court proceedings. For these reasons, their choice of methods for improving the quality of justice seems relevant in terms of sampling.

The comparative assessment is carried out horizontally across the five chosen legal systems at three different levels: namely, at individual, at organisational, and at justice system level. This type of analysis leads to the identification of common or divergent trends, recurrent problems, evaluation dynamics, and innovative solutions and practices developed at local and national level.

The choice for a comparative methodology relies on a number of reasons. First, a comparative assessment can provide valuable insights into solutions chosen by the countries to evaluate justice quality at individual, court, and justice system level. This can subsequently contribute to distilling a menu of data and methods that can be used to improve the quality of justice. This reveals in turn also factors that contribute to a successful evaluation or lead to failure of undertaking a meaningful evaluation. Second, a comparative analysis between national evaluation mechanisms and actions directed towards improving justice quality also has an educative function, offering national policymakers, courts managements, professional training organisation, and individual judges and

¹ K. Zweigert, H. Kötz, *Introduction to Comparative Law*, translated from German by Tony Weir, 3rd Edition, Clarendon Press, Oxford, 1998, p. 34.

² G. R. DREWRY, « Public Management Reform – A Challenge to Judicial Independence? », in *The Challenge of Change for Judicial Systems. Developing a Public Administration Perspective*, M. FABRI and Ph. M. LANGBROEK (éd.), IOS Press, 2000, p. 93.

members of staff a way to learn about each other's experiences and actions that have been successful in improving justice quality. And third, the results of this comparative report can become a relevant mechanism for national and European policymakers to encourage and improve the evaluation of the quality of justice at national and European level.

Knowledge of national evaluation practices and solutions to similar difficulties in seeking to improve justice quality can lead to a diffusion of certain domestic approaches beyond the legal system analysed.

As noted by Örüçü, 'in the context of the European Union, [...] where comparative law is a driving force and has a decisive role in the harmonisation process, the "functional comparative analysis method" [...] provides the potential for convergence in both the legal systems and the legal methods of the member states, leading to a gradual and eventual legal integration'³.

The comparative analysis can identify existing national practices, difficulties related to evaluation methodologies and key issues for a quality justice, and methods to single out good practices. Being aware of the choices made by different legal systems in the evaluation of justice at various levels is a first step in being able to discuss them and consider their use. An exchange of solutions, ideas and discussions with regard to national approaches can set the way for potential converging methods and for the sharing of best local practices.

Nonetheless, the comparison between the five countries comes up against some limitations. Risks are particularly related to the relevance of the common concepts, and translations used by each national team. In order to tackle these limitations, a thorough understanding of each country's mechanisms and concepts related to evaluation at various levels is necessary, as well as a careful choice of terminology and a continuous process of verification and validation of findings between researchers. The structure of the study and the main topics to address were consensually established before the collection of the national data by each team. Specifically, a common vocabulary and understanding of concepts were undertaken before starting the data collection. All teams proceeded to the collection of qualitative and quantitative data related to the evaluation mechanisms in place in their national system. This mixed approach between quantitative and qualitative research methodology was considered the most appropriate in order to obtain a holistic image of the national evaluation methods that are deemed to secure justice quality at individual (judge), organisational (court), and justice system level. The qualitative data is complementary to the quantitative findings, and offers a more comprehensive picture of how evaluations are used and what are their consequences.

The Quality of Justice is a very sensitive political subject and consequently, the methodology to collect data is particularly delicate. However, this limit concerns each national report – certainly to a different extent – and does not question the relevance of the sampling nor the interest of such a comparative analysis. It can be alleviated by a very comprehensive approach and by using a wide variety of tools: literature on the subject, interviews with all stakeholders, and field research.

To identify both qualitative and quantitative evaluation mechanisms, the national analysis had to focus on three key institutional venues in which both qualitative and quantitative data are used: the evaluation of judges, court evaluation and the evaluation arrangements associated with the allocation of resources. The three mechanisms match the three perspectives on the quality of justice: professional (evaluation of judges), managerial (court evaluation) and governance (resource allocation). Also, each national analysis sought to explore the rise of innovative practices on quality evaluation and development. Thus, the research groups of the five countries have focused on how the activity of their judges, their courts, and finally their judicial system are managed and evaluated. The budgetary aspects are major concerns for every country and affect a wide range of issues. All this lead to important governance reforms in many countries. In seeking to identify trends that can enhance the visibility of national practices that could be interesting for application or national developments in other countries, the study distinguishes then three topics. Firstly, it analyses the

³ E. Örüçü, 'Methodology of comparative law', in J. M. Smits (ed.), *Elgar Encyclopedia of Comparative Law*, 2nd Edition, Edward Elgar, 2012, p. 563.

methods of evaluation and promotion of individual, courts and judicial system's quality; secondly, it highlights the importance of budgetary aspects in evaluating and promoting the quality of justice these days, and thirdly, it makes evident the new and innovative developments in governance related to the evaluation and promotion of the quality of justice, and to the resource allocation.

3. Methods of evaluation and promotion of judges, courts and judicial system's quality

The current comparative analysis focuses on the evaluation methods addressing judges, courts and judicial systems in the five countries. It is then necessary to distinguish the methods of evaluation and promotion of quality at the individual level (judges), at the organisational level (courts) and at the level of the judicial system (by ministries and councils). The main trends in the evaluation and development of the quality of justice in the analysed countries can be established from their analysis.

3.1. Evaluation and promotion of the quality of judges

Individual evaluation is considered particularly important in terms of the quality of justice, therefore it is a highly developed field where various methods and channels are used for assessing the professional qualifications of the judges. As the project initially supposed, in the last decades the role of the judges has changed considerably, and it is still changing. We have been witnessing an unprecedented increase in judicial power within institutional settings. Judges have to decide a growing number of cases. Many cases are very complex, and many are of great importance, having powerful political and moral ramifications. Courts, accordingly, play a significant role in domestic and international policy-making⁴. More power triggers more attention, and entails well-established demands for greater accountability of courts which has consequences also for the evaluation and promotion of quality of judges.

Recruitment of judges affects the quality of justice to a great extent. Consequently, the recruitment process is given more attention nowadays than in the past, and the new criteria of quality that seem to appear are particularly interesting. While the selection of the judges focused in the past overwhelmingly on the candidates' legal knowledge (on what the law is and how to apply it in concrete cases), now we can observe a particular attention to the diversification of candidates profiles; special attention is paid to practical skills, with, for example, the combination of school and field experiences, and more attention is given to interpersonal skills. The continuous evaluation of judges' performance affects the quality of justice too, and the scope of the relevant considerations is also more extended.

Indeed, in continental and civil law judiciaries, once selected, the judges are expected to undergo different evaluation steps during their career. Analysing how continuous evaluation is carried out this points towards a more extended evaluation of the individual assessment which in turn has more consequences on career, learning, or promotion than it used to have in the past. All aspects of quality are increasingly evaluated: from legal conformity to treatment of the parties and efficiency. Five trends become visible from the comparison of the national reports at the individual evaluation and promotion level: diversification of judges' profiles; promotion of know-how and interpersonal skills in recruitment; a more extended evaluation of the individual performance with awareness of the risks it can entail to judicial independence; the awareness of the necessary prudence in the evaluation of the court decision and of the limits of current systems of individual evaluation.

3.1.1. Diversification of Profiles in recruitment

The comparative analysis suggests that new criteria for individual quality are emerging. The diversification of judges' profiles is one of them. Diversity is a multifaceted concept, and many

⁴ Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*, Cambridge, Mass.: Harvard University Press, 2004.

aspects of it can be relevant for judicial decision-making: these aspects encompass primarily the professional and social (for instance ethnic) background of the judges, and the gender identity of them. Diversity is an attractive idea as far as it contributes to enhancing the legitimacy of judicial activity: a more diverse judiciary can certainly earn greater trust by the public (*the social dimension of legitimacy*); and courts can render even better judgments due to the different perspectives, considerations and experience that are given careful attention, if we suppose that extensive exchanges take place between judges in judicial panels, in courts or within the judicial system (*the legal dimension of legitimacy*)⁵. Therefore, all developments characterized by the willingness of the countries to open up the profession to judges with a greater diversity of social background and professional experience and to ensure more diversity in the recruitment process are certainly deemed desirable.

Social diversity does not constitute an independent aspect of judicial profiles in judicial appointments in the five countries. At least in the Netherlands, the problem of lack of ethnic diversity was raised by some judges, but the efforts from the judiciary to make its composition more diverse have so far proved unsuccessful because the recruitment process focuses more on judicial quality than on the social representativeness of the judiciary. In terms of gender equality, the respective countries do not take peculiar measures to promote a fair representation between female and male judges in courts. The lack of special gender policies cannot be seen as a shortcoming as the gender composition of the judiciaries are more or less balanced in most of the countries concerned. However, there is a clear tendency for a relative increase in the number of successful female candidates. Female judges are, accordingly, slightly overrepresented in Finland, Italy and the Netherlands. Women constitute a much higher proportion of the judges in the French and Hungarian courts. Nonetheless, we find less female judges in higher judicial positions almost in all countries concerned by this research project.

In the selection of judges, we can see efforts to open up the profession to those with a wide range of professional experiences, which certainly contribute to adopting decisions that are more reflective and in line with the evolutions of society. This is really explicit in the case of France where external recruitment is increasing in ordinary and administrative courts⁶. In Finland, judicial selection tends to “promote the recruitment of judges from all legal professions, including Court Referendaries, the civil service, academia and other legal professions”⁷. In the Netherlands, the selection rules have not been recently modified but already specify that “applicants need at least two years of legal experience outside the judiciary”⁸. A significant number of candidates recently selected to Dutch courts had substantial legal experience (see NL-3.2.3). In Italy, recruitment still selects relatively young law graduates, with modest professional experiences, and lateral recruitment is limited to few judges at the Court of Cassation⁹. However, alternatives to the post-graduate degree were introduced in 2006 and 2014, and this “may lead to a change in the traditional profile of apprentice magistrates who until a few years ago had most probably no previous professional experiences”¹⁰. A notable exception is Hungary where judges are recruited almost exclusively from within the judiciary, from former judge trainees who gain admission to the judiciary right after graduating from law school¹¹.

⁵ On the relevance of diversity regarding the epistemic performance of courts, particularly in case the court sits en banc or in panels, see Tamas Gyorfi, Why Is the Equal Merit Principle (Almost) Straightforwardly Wrong? *The Modern Law Review* (2017), Volume 80, Issue 6, 1052-1072. Available at SSRN: <https://ssrn.com/abstract=2991474>

⁶ See FR-2.2.1

⁷ See FI-2.2

⁸ See NL-3.2.2

⁹ See IT-2.2.1

¹⁰ See IT-2.2.1

¹¹ In the Hungarian judicial system, working as a clerk is generally considered as a necessary step before the application for judgeship. After a minimum one year of clerkship a person can apply for judgeship. See HU 1.1

In order to enhance the diversity of the judicial profession, selection boards or commissions responsible for evaluating and ranking the candidates must also reflect different perspectives on the professional requirements for delivering high quality justice. These boards consist mostly of judges, but some external members are usually involved in the recruitment: they are typically representatives of other legal professions such as lawyers or members of the academia. It is France which provides the most diverse boards for judicial appointments including non-legal experts as well (a psychologist or heads of public organizations). By contrast, in Hungary, the outcome of the selection process depends exclusively on judges.

While many countries seek to ensure greater diversity regarding the professional background of the judiciary, social diversity are not a major concern for selecting judges. If the judicial profession remains relatively homogeneous and closed, it is likely to adapt only slowly to the changes in the social environment, and tends to hinder reforms that are targeting traditional and sometimes outdated judicial attitudes, organizational and administrative practices. Also, homogeneity can be problematic in terms of the legitimacy of the judiciary.

3.1.2. Promotion of practical skills and interpersonal skills in recruitment, continuous evaluation and training

Like the diversification of profiles, the development of practical skills/know-how and interpersonal skills seem to become new criteria for individual quality. Indeed, the selection process increasingly focuses on more diverse professional skills, making a shift from the previous focus on legal knowledge towards practical skills and competences. While in the past, the selections were overwhelmingly made on the strict assessment of the candidates' legal knowledge, now they increasingly focus on interpersonal skills, like teamwork or listening skills.

In France, during their schooling in the National School for Judges ("Ecole Nationale de la Magistrature"), court auditors must acquire thirteen fundamental capacities: deontology, analysis and synthesis, respect for the procedure, adaptation, authority and humility, relational capacity, preparation and conduct of an audience or an interview, decision-making, motivation, taking into account the institutional environment, teamwork, organization and management¹². Skills related to know-how and social/interpersonal skills like adaptation, authority and humility, relational capacity, preparation and conduct of an audience or an interview, are new. It is a clear indication of the changing demands concerning adjudication in France. In the same way, a psychologist is now a member of the jury which hears and ranks the candidates¹³. This trend is also actual in the Netherlands¹⁴; and in Hungary "For candidates, it is compulsory to undergo a professional aptitude test which include medical and physical examination, as well as psychological assessment. The examinations shall cover all mental and health considerations that may preclude or severely impair the judge's performance, and shall assess the judge's intelligence and personality. The test shall provide an assessment of the candidate's personality from the perspective of his/her suitability for being a judge"¹⁵. Italy and Finland seem to be exceptions from this viewpoint insofar as they do not require such promotion of know-how and interpersonal skills in recruitment. In Italy, for instance, the selection process still concentrates almost exclusively on the candidates' knowledge of law¹⁶.

These requirements can also be found in the continuous evaluation and training of individual judges. They show that the quality of the judge does not only imply her legal knowledge but also qualities in her relations with colleagues and users. It is a new and positive development that the evaluation process takes into account and puts a heavy emphasis on judicial skills other than legal knowledge.

¹² See FR-2.2-4.

¹³ See FR-2.2.1

¹⁴ See NL-2.2.1

¹⁵ See HU-2.2.2

¹⁶ See IT-2.2.2

This attention to the personality of the judges certainly explains the greatest attention paid to the judge's ethics¹⁷. The question is whether this translates into new considerations in the judge's individual assessment.

If theoretical training is still important and forms part of the initial training of judges, the development of the professional capacity regarding practical skills is more and more the guiding criteria of quality, as mentioned previously. This probably explains the promotion of know-how. Thus, the comparison shows an increase in practice-oriented evaluation and training. In Italy and France, judges' training opted to combine recently school and field experiences. In Finland, experience in a judicial function or in any other legal profession related to the functioning of society is required to become a judge. In Hungary, while judge trainees and court clerks have to take part in trainings focusing on ordinary doctrinal issues, they also assist the work of judges. Furthermore, there are compulsory in-service trainings for judges (aiming to develop theoretical knowledge and practical skills), and the system also organizes a tutoring period for a new judge by an experienced judge (the system of mentor judges). The only exception in this trend seems to be the Netherlands where judges have always been selected based on a special profile and have already followed initial training with theoretical courses and training on the job. Experienced lawyers can follow a special trajectory.

We observed that in many countries, the consequences of the individual evaluation on the judicial career and promotion are much greater than in the past. It leads to the question whether these developments constitute undue risk on the independence of judges.

3.1.3. A more extended individual evaluation but awareness of the risk

Even if individual evaluation seems to be more and more accepted, there is a well-established concern in all countries under consideration that a tight monitoring of the day-to-day activities of the judges might pose threats to judicial independence. This awareness of the risks for the judges' independence exist especially in countries where there is a link between evaluation and remuneration, for instance, in France, with regard to ordinary as well as to administrative judges¹⁸. This awareness leads judges and a number of academics¹⁹ to call for establishing a link between individual evaluation and the training of judges in order to connect evaluation to a qualitative rather than to a quantitative objective. Indeed, empirical research shows that in France the bonus is used to encourage judges to increase their productivity.

Precautions are generally taken. The case of Italy is particularly interesting because it puts forward preliminary criteria of individual quality which seem (in theory) to be a bulwark to the risk of undermining independence. The criteria are « independence, impartiality and balance »²⁰. Considered as pre-requisites to the fulfilment of the judicial function, the criteria must be rated “positive” to proceed with the assessment of the other criteria²¹.

Elsewhere, in order to avoid compromising the professional integrity of judges, or putting significant pressure on them by controlling their activity, the work of the judges is subjected only to “soft” evaluation instruments. These concerns are reflected by the RechtspraakQ quality management system of the Netherlands. For example, as an element of the RechtspraakQ, in the Netherlands, the system of peer review has been set up as an individual assessment method that is particularly interesting for

¹⁷ C. Foulquier-Expert, « The Emerging Global Judicial Ethics : Issues and Problems », 19th International Conference on Judicial Independence, Paris, France, 25-26 June, 2017.

¹⁸ See FR-2.3.3

¹⁹ Lucie Cluzel-Metayer, Caroline Foulquier-Expert and Agnès. Sauviat (dir.), *La prise en compte de la notion de qualité dans la mesure de la performance judiciaire (QUALIJUS) – Justice administrative* (June 19th, 2015) <<http://www.gip-recherche-justice.fr/publication/qualijus-aspect-administratif/>>. Berthier L., “Qualité et évaluation des magistrats administratifs”, *Revue française d'administration publique* 2016/3, n° 159, p. 739-750.

²⁰ See IT-2.2.1

²¹ *Ibid.*

improving quality and not detrimental to the independence of judges. While it applies to judges who work in a three-judge panel, it is considered as particularly interesting for single judges, whose decisions are more open to criticism²². The system of peer review encompasses different actions such as co-reading of judgments, peer-to-peer coaching, discussions or meetings. In Finland, there is a serious caution about individual evaluation, just like in the Netherlands, and the risk awareness is also explicit.

In those countries where the performance of individual judges is in the focus of the quality of justice, judges are subjected to complex evaluation mechanisms which takes place periodically. While in Hungary, individual evaluation is only organized every 8 years for experienced judges²³, it is undertaken every two years in France and every four years in Italy.

In terms of judicial independence, it seems crucial whether judges or courts are the primary subjects of the evaluation process. We are of the opinion that in those countries where performance measurement and management is targeting particularly the judicial organization (and not the work of individual judges), and judges are subjected only to such mechanisms that serve a learning rather than a control function, judicial independence is less exposed to real threats.

While individual assessment is increasingly seen as a condition for quality improvement, a parallel demand for judges' in-service training is developing. Judges have to participate in in-service trainings in order to develop their professional skills. In Finland, a recent reform was set up in this direction, particularly with the creation of the Judicial Training Board and by establishing a compulsory and more systematic training scheme from 2017²⁴. Mandatory trainings for judges constitute a recent development in Hungary as well (see-HU 2.3.4). In the Netherlands, there are clear educational standards as judges have to spend 30 hours in a year (or 90 in three years) on trainings. In France, this subject is controversial because experienced judges also have hours of training to perform but due to lack of time they choose them on geographical criteria or availability rather than according to their needs, and particularly the need revealed during the annual professional evaluation. It is only in Italy where mandatory in-service trainings still have not been generally instituted, except for the compulsory trainings for candidates for managerial positions. However, participation in trainings is an aspect of judicial performance that is taken into account in the periodic evaluation of judges (see-IT 2.3.2)

Organizing regular in-service trainings have become a generally accepted tool for developing professional capacities. Furthermore, it seems to be a common goal for all respective countries to make these trainings more individualized and adjusted to the special demands of judges. It should be noted, however, that some judges emphasized during the interviews that they do not have the time to follow these training courses because their workload is heavy.

3.1.4. Prudence in the evaluation of the court decision

The activity of judges can be evaluated through the quality of the judicial decisions rendered by them. The "legal quality" of the decisions (whether judges have made good decisions or not) can be assessed from an internal perspective through professional standards by higher courts, or in the process of continuous judicial evaluation, and from an external perspective by the stakeholders as well. Also, judicial decisions are regularly the subject of academic or public discussions. These tools can serve important purposes, but they can be dangerous from the point of view of the independence of judges, although on this subject much depends on the methodology used.

The quality-check conducted by higher level courts is an integral part of all justice systems, but the rate of changed or quashed judgments as an indicator of quality must be applied with substantial

²² See NL-2.3.3

²³ At the very beginning of the judicial career, judges are evaluated in the third and sixth year.

²⁴ See FI-2.2.5

caution. This is suggested by the observation of the five countries as the outcome of these procedures rarely has direct consequences for the judicial career. Finland considers the number of quashings, but doing this with respect to the reason for change, which makes the indicator less questionable. Appellate courts use twelve different codes for indicating the reasons for changing the judgment of lower courts, and the relevant information is channelled into the process of budget negotiations. However, the proportion of changed judgments by appellate courts is not recorded or registered related to individual judges (see-FI 2.4.2). In Italy, reversal decisions are considered just in exceptional (serious) cases and if signalled by the head of court. In France, the number of quashings is considered, but only at the level of the judicial system's evaluation. In Hungary, the rate of quashed judgments per courts are monitored and now published, and this kind of information can also be taken into account in the process of individual evaluation.

The quality of judgments can also be assessed within the process of continuous judicial evaluation. This is the case in Hungary and Italy: in the former country, this task is carried out by the judge's superior, while in the latter by the Local Judicial Council. This competence requires a very careful handling, since it can easily subvert the professional integrity and autonomy of judges.

For that reasons, in the Netherlands, the legal quality of the decisions is considered through co-readings and discussions carried out in a friendly environment by colleagues, aiming to provide feedbacks and reflections.

The five countries also show restraint in using appeal rates as indicators of the quality of individual judicial performance. Appeal rates reflect the court users' perspective, and if they are published, this data is broken down only to courts. This practice reflects the view that the number of appeals can primarily be relevant for the overall performance of the judicial organization.

Judicial writing or drafting constitute a further aspect of the 'legal quality' of court services. The goal of improving the quality of judicial writing is sought everywhere. These efforts focus mostly on enhancing the clarity of the reasoning and hence making the judgments more comprehensible for the stakeholders and the public. One can mention for example the attempts to assess the quality of decisions in civil matters, and the existence of writing guides (PROMIS) in the field of criminal justice in the Netherlands. In Italy, some model documents and drafting guides have been developed within the Civil Justice Observatories. Similar bottom-up initiatives regarding the benchmarks of judicial reasoning occur in Finland as well, in the Rovaniemi project. Some models of writing do also exist in France and in Hungary²⁵. One can also mention the French experience of software reporting particular cases or derogations. To achieve this goal, new technologies are particularly useful. Digitisation is used as a way to improve quality, particularly for a quicker and closer justice. But it is also a way for judges to access more legal documents, case-law databases and guidelines.

Despite these precautions and prudence, everywhere, the lack of jurisprudential consistency is subject of regular criticism. To avoid this kind of criticism, in France it has been recently introduced the "litigation opinion" which gives the opportunity to ordinary courts to ask for a legal opinion to the High Court. This tool is already used by administrative courts as a solution to avoid inconsistency in case law. Some French courts also entrusted new tasks to legal assistants to harmonize the case law of a court. In Hungary, the Curia can issue so-called uniformity decisions which are binding on all lower courts and address controversial issues and inconsistencies of the judicial practice. The Curia can publish "general opinions", and also guiding decisions (leading cases) which play the role of precedents (see HU-1.1). However, these tools of the Curia were seen by some external experts as

²⁵ In Hungary, the development of a 'style guide' was launched as a pilot project within the Curia, and so far, we know very little about its possible effects on the drafting practice of lower courts. However, the Curia judgments now seem to have the same structure (see HU-3.3).

being capable of compromising judicial independence, particularly if “non-compliance with rulings of the higher courts will negatively influence the evaluation of judges”.²⁶

Academic discussions and public debates can make valuable contribution to the quality of judicial decisions by providing feedback for judges. Nevertheless, there is a worrying trend in almost all the five countries: we are witnessing an increasing criticism of the activity of courts put forward by political leaders, who challenge the content of judgments on an incidental basis, especially when judicial decisions are unfavourable to them. This seems to be the case particularly in Hungary, in Italy and in France. In the Netherlands, politicians sometimes also show their discontent with judicial decisions, but this does not occur frequently. Also, the Dutch media are quite respectful to the judiciary. Finland seems to be the only exception, where the judiciary could remain absolutely intact from this dangerous behaviour of the politicians. Indeed, traditionally, such behaviour has been seen as challenging the independence of justice. And some cases in Europe call to remain vigilant²⁷.

3.1.5. Limits of current systems of individual evaluation

The limits are twofold: on the one hand, the systems of individual evaluation are limited in their scope since they are perceived as dangerous for the independence of the judiciary; on the other hand, they are methodologically limited since their interest for improving quality of justice is considered as poor in the absence of relevant performance indicators.

The individual evaluation must be “handled with care” as it can be very dangerous for the independence of justice. Indeed, “merit remuneration”, marking and ranking judges, are considered dangerous to the independence of the judge. One can wonder too if the “productivity remuneration”, as in France, does not create a risk for quality of justice, as it can question the independence of the judge and focuses only on her speed.

According to the interviewed judges, the methodology of individual evaluation must be perfected. Quality evaluation should imply a precise determination of the objectives of measuring individual performance: should it be solely to the advantage of the court (at risk of being limited in practice to effectiveness and efficiency) or also to the advantage of justice and the judge (the consequence of a bad evaluation being to fill the professional inadequacy by offering the judge the opportunity of training). For instance, in France, the bonus system based on the judge's productivity has been so difficult to handle that some presidents gave the same bonuses to all judges, which paradoxically reduces their interest in terms of motivation for productivity. In addition, should professional advancement be based solely on individual evaluation, whereas it is most often based solely on the assessment of the president?

3.2. Evaluation and promotion of the quality of the courts

In search of the best practices for the evaluation and promotion of the quality at court level, one has to pay particularly attention first to which actors are involved in this process (for instance the Ministry of Justice and/or Judicial Council, the court users). It may also be important whether quality evaluation is determined by a national policy or is more a matter of local initiatives, or what are the standards for evaluation, which data are used; and the possible consequences of evaluation such as appointment or reappointment of court presidents must also be taken into consideration.

Here, the comparative analysis shows three main trends: the development of formal tools for the organization of courts inspired by the Business Management; the search for more coordination and

²⁶ Venice Commission, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary. Strasbourg, 19 March 2012, 663/2012, CDL-AD (2012)001, paragraph 72.

²⁷ In United Kingdom, some newspapers react to Judges' Brexit Ruling in the Miller Case (*Miller v. Secretary of State for Exiting the European Union*, November 3rd, 2016) by referring to them like the « enemies of the people » or the « judges against the people »: <https://www.theguardian.com/politics/2016/nov/04/enemies-of-the-people-british-newspapers-react-judges-brexit-ruling>. These kinds of unfavourable developments are highly visible in Poland. See Anne Sanders – Luc von Danwitz: *Defamation of Justice – Propositions on how to evaluate public attacks against the Judiciary*, VerfBlog, 2017/10/31, <http://verfassungsblog.de/defamation-of-justice-propositions-on-how-to-evaluate-public-attacks-against-the-judiciary/>, DOI: <https://dx.doi.org/10.17176/20171031-181401>.

some increasing exchanges with the outside world. We could also analyse the role of resource allocation under this heading but a specific section will be dedicated to this major issue (see *infra/below*).

3.2.1. Development of formal tools for the organization of courts

Methods derived from the management of companies are developed within the courts administration of the five countries. Formal tools such as Charters in Italy (organisational charts and annual activity programs), court projects in France are established to improve the organization of courts. Such tools are also applied in the Netherlands²⁸ and in Finland²⁹. In Hungary, courts establish annual work plans but they state only very general objectives³⁰. These documents are an opportunity to draw up a report on the activity and an improvement strategy. They allow to clarify and to plan different activities.

Planning is developed in the form of multi-year planning. In the Netherlands, the Council for the Judiciary publishes four year activity plans. Some courts also develop multi-year planning. In Finland, the example of Rovaniemi shows an interesting multi-year planning. In France, multi-year planning is now integrated in the new « courts projects ». In Italy, the Netherlands and Hungary, courts seem to plan their activities and their goals yearly.

There is also an increasing use of statistical tools and data in the five countries as a way to improve the judicial organization. In Finland, if the use of statistical tools for individual evaluation may vary from a court to another, it is an important part for evaluating the workload of the courts. This is also the case in the other countries. These tools make evaluation possible, which then takes a very quantitative form. They form the basis of the discussion between the authorities involved in the evaluation and the promotion of quality of justice. They are used at central and at local level. In Finland for instance, the use of statistical data is particularly important in the resource allocation process. Courts collect statistical data of the actual workload.³¹ In Hungary, the ‘statistical approach’ is also highly influential in performance management. More generally, these increasingly sophisticated statistical tools are essential for evaluating the effectiveness and efficiency of courts.

The extensive use of statistics and quantitative data can have some unfavourable consequences: courts and judges can feel under pressure to be more effective and productive while other aspects of quality can therefore be easily neglected. Furthermore, quantitative data reflect an approach for strong control which can compromise judicial autonomy and ultimately, the quality of justice.

3.2.2. Search for more coordination in the organization of the courts

This search for coordination is characterized by the recent creation of quality officers and quality coordinators in each court in the Netherlands³². For instance, the quality coordinators create enough possibilities and projects for the judges to spend time for quality work. In Finland, in the *Rovaniemi* quality project, a quality coordinator was created, but also a quality conference takes place in autumn³³. In France, this search for coordination can be illustrated by the creation of a coordination judge in each district court³⁴, the annual conference on juvenile justice³⁵ and a single reception service

²⁸ See NL-3.4.1

²⁹ See FI-3.1

³⁰ See HU-2.4.2.2

³¹ See FI-2.4.2

³² See NL-2.3.1

³³ See FI-3.1

³⁴ This judge must lead the activities of the court and reflect on its organization, judicial practices and case law in relation to the local context. She/he shall inform the President of the district court of the difficulties and the needs. She/he draws up an annual report on her/his activities.

³⁵ The aim of the conference is to bring together different actors of juvenile justice, to make their discussions be more fluid, and to define a policy, in civil or criminal matters, and to lead in this area. The difficulties of communication between the institutions, the difficulties arising from heterogeneous practices and the complementarity of the actors should be overcome by a better knowledge of the role and action of each.

for the litigants (*service d'accueil unique du justiciable - SAUJ*)³⁶. One can also notice the changing role of court presidents in all countries who mainly have this duty of coordination: they spend less and less time on dealing with the traditional tasks of judges, and work almost exclusively as managers. Although in most countries, court presidents are still recruited from judges, a growing emphasis is put on managerial skills with regard to presidents. For that matter, special trainings focusing on the development of these kinds of skills and competences are organized for court managers.

Coordination is used for management as well as for judicial activities. Indeed, the aims of this search for coordination are not necessary the same in all five countries. They tend to avoid managerial or judicial differences between courts (reduce time to disposition and grant the natural judge principle for example in Italy) or rather tend to avoid differences within courts. This is why coordination comes from the central level as well as the local level. In Hungary, "Trainings are coordinated at the central level by the Hungarian Academy of Justice, but then organized and held primarily at the regional and local level"³⁷. This central coordination can be explained by the fact that "trainings were ineffective since local and regional trainings were not coordinated at all"³⁸. However some coordination tools can appear at the local level as a means to improve the quality of justice. This is for example the case of the "reflection committees" on various aspects of the quality of justice (see *infra*).

3.2.3. Growing interaction with the outside world

Another trend that is really important in terms of improving the quality of justice is the efforts of the judiciaries to increase courts' exchanges with the outside world.

Communication with the outside world is developing as a way to improve quality, for example in the form of creation of communication teams in the courts or judges meeting with the parties. The exchange with the outside world can thus allow the justices to know areas in which improvements are needed. This is also probably a way to improve the citizens perception on the courts decisions. The interaction with the outside world is nevertheless limited and a criticism is often related to the lack of involvement of other/diverse actors in the evaluation of the courts (lawyers, courts users).

In the Netherlands, communication teams in the courts have been created³⁹; organization of meetings with parties, such as the Office of the Prosecutor, are regularly organized. In France, the new « courts councils » are meeting places to get together judicial actors and local authorities, local associations⁴⁰. Italy is currently organizing such type of exchanges, but more as initiatives of specific courts than as a result of a national policy. In Hungary, press officers have been appointed at appellate courts, and the central judicial administration places great emphasis on communicating judgments and making the judiciary more open for the public. There is no mention of such way of exchanges in Finland, but exchanges can be illustrated with satisfaction surveys (see below).

However, the evaluation of the courts involves little input from the other actors (lawyers, users). It is particularly clear in France, Italy⁴¹ and Hungary where critics in this regard are explicit. In Finland, there is little local involvement. Nevertheless, *Rovaniemi* is an exception as the outside world is regularly involved in the evaluation system set up by surveys since 2007⁴². In the Netherlands, the courts conduct regular surveys with these two categories of actors (lawyers and users) and also with

³⁶ The aim is to replace the various interlocutor previously competent (clerks of the court and administrative employees). It must be the first contact for litigants who come before courts, inform them about the proceedings and provide them with the relevant documents.

³⁷ See HU-2.3.4

³⁸ *Ibid.*

³⁹ There are press officers in the Dutch courts.

⁴⁰ The Court Council (in French, *conseil de juridiction*) is a recent tool that allows courts to open up to legal actors but also to local actors, thus, constituting an opening of justice to society. See FR-3.3.1.2

⁴¹ There are exceptions as some best practices promoted by the Judicial Council or discussed in the innovative practices.

⁴² One has to point out that this critic is specific to the evaluation of the courts because this is less true for system evaluation in Finland, as will be seen below.

the staff. Moreover, there is an evaluation carried out by a committee composed of experts which audits the courts every four years. “Mirror meetings” in the Netherlands also allow courts to get feedbacks from lawyers and citizens⁴³.

3.3. Evaluation and promotion of the quality of the judicial system

We have found at this level big differences between the five countries in terms of methodology of evaluation and improvement of quality. However, the objectives of quality are the same and address issues such as better treatment of parties, better understanding of judicial decisions, faster processing, and four common trends can be noticed: the growing interest in the assessment of the Judicial System by Customer Satisfaction Surveys; the establishment of informal quality reflection committees working on various aspects of quality; the sharing of best practices; and the development of bottom-up approaches.

3.3.1. Assessment of the Judicial System by Customer Satisfaction Survey

Users’ surveys are perceived as useful tools as they represent an external view of quality in addition or compensation to the most frequently used performance indicators that reflects primarily internal, professional standards. Depending on the country, this interest in surveys is expressed by judges, by managers or by researchers. Nevertheless, it is a shared concern of the research groups that surveys are not used regularly in the five countries.

We can also observe that there is much more evaluation by users’ survey or opinion polls at the national level than at the local level, if we rely on what is happening in the five countries. However, Finland, France, Hungary⁴⁴ and Italy⁴⁵ do not systematically or regularly organize surveys at the national and the local level (as just mentioned above). It is the Netherlands where the surveys are regularly used. In France, some experts tried to organize them⁴⁶.

3.3.2. Establishment of informal quality reflection meetings or local committees working on general or particular aspects of quality of justice

Most countries have established informal (i.e. not by following a legal obligation) meetings of quality reflection or local committees working on different aspects of quality. Italy put in place workshops on judicial interpretation and other legal issues. France and the Netherlands organised a number of national and local reflection meetings on general questions of judicial quality. In Finland, the court of Rovaniemi is an example of continual reflection on quality.

These committees are often created at the initiative of the judges and reflect a concern about an aspect of justice that appears to be of poor quality. They often lead to tools that are not intended to evaluate practices but simply to improve them, for example through the writing of good practice guides for their peers. They are more promotional tools than evaluation tools. One may wonder if these initiatives are reactions of judges to the central evaluation and promotion of the quality of justice that is too productivity-oriented. This may also be the reason why these committees are often created spontaneously, informally and locally.

3.3.3. Sharing of best practices

The five countries also share a development/drafting of good practices, sometimes in a bottom-up approach (like the “best practices” in Italy) or a local approach (like the protocols of agreement in Italy and in France). Good practices are therefore not always widespread. However in Italy, a best practice project aims to disseminate them mainly to improve the quality of justice. In France, there is

⁴³ See NL-4.3

⁴⁴ In Hungary, customers’ surveys are not compulsory and contains only very few information.

⁴⁵ The Italian report even denounces that some of the data provided by the Ministry of Justice to the CEPEJ are not correct.

⁴⁶ In France, a satisfaction survey was carried out by a member of the *CEPEJ* under the supervision of the district court of Clermont-Ferrand in 2012.

an interesting ascending practice with the National School for Judges (NSJ) which, through its training and the documents it disseminates, ensures the sharing of good practices to all judges in office. This is particularly a Guideline on the methodology of the drafting of civil judgments in 2014 (see below). In the Netherlands, standards are developed by judges in each court on the basis of the quality demands of the Council for the judiciary, and these standards are also used to define how much time judges need to deliver quality work. This is then translated into budgetary demands. In Finland, the court of Rovaniemi organizes “good practice days”. And in Hungary, a new project aiming to improve the timeliness and the quality of adjudication has been developed at the District Court of Debrecen in criminal cases.

The definition of these best practices is a quality promotion tool made by judges for judges. It is not a quality evaluation tool strictly speaking, although it can become so. This is not a quantitative evaluation as generally implied by budget requirements.

3.3.4. Development of bottom-up approaches

As the examples above show, there is a growing number of bottom-up approaches. The Rovaniemi Project is the perfect example. What is interesting is that countries that traditionally follow rather top-down approaches also develop them. We can mention the Civil Justice Observatories (*Osservatori per la giustizia civile*) aiming for improvement in various areas of the Italian justice system and bringing together the entire spectrum of legal practitioners (magistrates, lawyers, clerks, Court managers, academics) on voluntary bases to analyse various fields of substantive and procedural law and establish common practices. The French Guideline on the methodology of the drafting of civil judgments published in 2014 by the National School for the Judiciary is also the result of a bottom-up approach bringing together members of the first instance court of Paris, a court which had already carried out a reflection and developed tools in this matter, a court of appeal adviser and teachers of the school. We can imagine that in these countries this increasing approach is linked to the shortcomings appearing at the central level.

4. The importance of budgetary aspects in assessing and promoting the quality of justice

The budgetary aspects are undoubtedly important nowadays as limitation of resources can negatively affect the quality of justice. This is particularly clear in years of budget cuts. Moreover, the last 20 years have witnessed profound changes in the way in which resources are allocated: new managerial practices have changed resource allocation mechanisms in many countries, which have numerous consequences on the quality of justice. Number of countries have experienced these budgetary changes and this has led to four new trends in the administration of justice that have to be pointed out in this report: the question of possible budgetary decentralization; the weak link between the budget and the quality policy; price per case calculations as the basis of budget planning and the taking into account of the workload by judge.

4.1. Towards Budgetary decentralization?

A movement towards budgetary decentralization seems to appear. This is positively perceived for independence of justice⁴⁷. The Netherlands apply what is called the « integral management » where each court is entirely responsible for its budget. This implies budgetary decentralization (‘integral budget’), due to the negotiation of the budget between the Ministry of Justice and the Council for Judiciary⁴⁸, then the distribution of the budget between the Council and each court (based on production numbers of cases, and some additional costs). After this, all Dutch courts directly manage

⁴⁷ Budgetary autonomy and autonomous appointment of judges, generally entrusted by a High Council for Judges, are considered as the characteristics of a court administration guaranteeing their independence. This is the model of the majority of Nordic countries.

⁴⁸ See NL-3.5

their budget and are accountable for it. Furthermore, “Very recently, while discussing the bill for a new Accounts Act, an amendment was proposed to create a separate budget chapter for the judiciary. The Minister of Finance recommended rejecting this amendment, but the outcome is not known yet. The president of the Council started this debate in the annual report 2015, supported by an article in the Dutch lawyers’ journal NJB⁴⁹, by another Council member and by the Council’s research director”.

Finland, France and Italy do not apply this budgetary decentralization insofar as their management is still centralized, which has an impact on budgetary management. Nevertheless, these three countries are considering reforming this approach. In Hungary, the allocation of resources is centralized as the process is managed and controlled by two main actors: on one side by the political leadership and on the other, by the President of the National Office for the Judiciary. Courts themselves have very limited influence in planning and spending the budget.

4.2. The weak link between the budget and the quality policy

One could expect the current discourse on the necessary improvement of the quality of justice be accompanied by a real budgetary effort from public authorities. This is not the case. Decentralized or not, the budget allocation is not sanctified, insofar as it is everywhere a political and administrative competence, and the political will, or the economic context, do not allow to increase budgets for justice. In the Netherlands, it is clear that the budget allocation depends on the budget allocated to the ministry, and not of the courts’ needs or on the output based financing model. In spite of the start of the ambitious quality policy RechtspraakQ, courts can no longer retain the money they have been able to save and use as they wish. In Finland as in France, the budget allocation is associated with a productivity-related system. However, no additional resources are available in France to encourage productivity. In Finland, additional resources can be acquired through justification: “In case of large changes in resource requirements, there are possibilities for applying supplementary budget.” In Hungary, the National Office for the Judiciary has a little room for manoeuvre at its disposal. In Italy savings (and a fortiori bonus) are not possible, since court Budget is practically non-existent.

It leads to conclude that there is only little link between budget and quality policy. This is absolutely true in France, Italy, Hungary and the Netherlands. In Finland the first stage of budgetary negotiations is always related to societal effectiveness. One can also mention that in Hungary, in the last few years, some additional resources have been allocated to high-performing courts and judges within national projects aiming to cut the backlog of courts. Nevertheless, this system of remuneration has been applied only as part of temporary projects. So, in general, there is no connection between the budget and the quality of judicial work either.

4.3. Price per case calculations in planning the courts’ budget

Price per case calculations have been developed in many countries. It means that the budget is calculated on the basis of the number of cases to be disposed in the following year. In the Netherlands, the system is based on an average time spent by magistrate and administrative staff on a case. But a number of opinions (particularly judicial opinions) state that it compromises the quality of justice, either from a budgetary point of view (because sometimes it leads to disproportionality in the allocation of resources) or from a judicial point of view (because it drives judges to spend less time on difficult cases). France was inspired by this system and put it at the basis of its Budgetary Allocation System. In the same way, in Finland, the estimation of the courts’ workload is the main criterion for allocating resources. A pilot on weighted workload calculation is currently developed, where the different case groups have a weight score depending on the complexity and time/resource requirements. In this system, the case categories are divided in different complexity categories based on the approximate time they require. The weighted caseload system makes it easier to compare the

⁴⁹ ‘Year Report Judiciary 2015’ published 13 May 2016. Accessed at: <http://njb.nl/nieuws/jaarverslag-rechtspraak-2015.19763.lynkx>.

performance of courts with different type of caseload. In Italy and Hungary, allocation is not based on such clear criteria as price per case.

4.4. Taking into account the workload per judge

Nevertheless, one has to mention a new trend which implies to take into account the workload per judge. The measurement of the workload of the judge (i.e. the time spent by a judge to handle a specific type of case) is becoming a new relevant practice. In Finland, is being developed a very interesting analysis at the level of each judge to find out why one judge is slower than others, and whether the reason for lagging behind is that she has more difficult cases to work with. Finland is developing the "time-frame alarm system" as an innovative tool for taking into account the workload of the judges that permit them to control their "workload situation and plan the work according to the age of the cases". This is a managerial tool intending to better organize the judges' work and to relieve pressured personnel. Without the system being as refined as in Finland, projects of calculation of the workload are also developed in Hungary and in France⁵⁰. In Hungary, case weights were established a few years ago and are used in the process of case allocation, particularly in large courts, in order to ensure a balanced workload among judges. In France, some courts develop projects in this direction, the aim being to improve the judges' well-being at work.

The question is then: is the new trend only intended to correct the case allocation system determined by the budgetary logic that puts sometimes too much pressure on judges, or is it intended to be a real part of quality policy, what will be more beneficial for the promotion of quality?

5. Developments in governance related to the evaluation and promotion of the quality of justice

The requirements for improving the quality of justice have led to important governance reforms. Indeed, the new methods of evaluation and promotion of the quality of justice have had political and administrative implications; the question has been raised about the protection of the independence of the judiciary. While a number of innovations in Governance for more independence and/or more effectiveness and efficiency can be observed in the five countries, a criticism of the ineffectiveness of the relationship between the Minister and the Judicial Council is emerging. Yet this relationship is the major reform in governance. The increasing involvement of local or private actors is the subject of a number of questions.

5.1. Innovations in Governance for more independence and/or more effectiveness and efficiency

There is a first common trend in some countries at the managerial level. Indeed, there are reforms and debates for more administrative decentralization. This new trend in governance has two main goals: a greater judicial independence and/or a greater judicial effectiveness and efficiency. In Italy, the Local Judicial Councils have been established to support the "central" judicial council in dealing with a huge number of affairs, particularly evaluation of judges, and court planning. They are decentralized governance bodies, with, in particular, the role to evaluate magistrates. Indeed, individual evaluation done mostly by the president of the court is considered as inappropriate in Italy, while the Judicial Council at central level – that is constitutionally entrusted of this function – is not in the condition to evaluate 10.000 magistrates every 4 years. The creation of Local Councils for Judges in Italy can be conceived as the first steps in the direction of the decentralization. In Hungary, the Ministry of Justice does not have meaningful managerial powers with regard to the judiciary; since 1997, judicial administration is clearly separated from the executive branch. The Ministry is responsible primarily for law-making. Since 2012, the National Office for the Judiciary is in charge of the judicial

⁵⁰ Italy does not have such kind of system. In the best case, they measure the caseload (i.e. the number of cases dealt with by a unit per different types of cases).

administration, and the President of the National Office for the Judiciary, who is appointed by the Parliament for 9 years, is the head of judicial administration. In theory, the President works under the supervision of the National Committee of Justices whose members are elected by the members of the judiciary. Although bottom-up initiatives for managing courts are in principle encouraged, the system is, de facto, highly centralized: a single-person leadership prevails, and organizational and managerial issues are decided at the central level. The “checks and balances” power of the NCJ provided by the law is weak. The Netherlands have introduced the Council for the Judiciary which acts as an independent intermediary between the judiciary and the government. As indicated by the Dutch report: “The creation of the Council aimed at increasing the independence of the judiciary and was part of a far-reaching reform of the judiciary system that took effect in 2002”. Furthermore, they also introduced the “integral management” for courts.

France is a real exception here despite the existence of a High Council for Judges. This country is historically known to have a very centralized State Model. Particularly, this council has little power since it has only disciplinary functions and some functions in the career of some judges. Finland is also a centralized system, but there is a current debate about the establishment of a judicial administration council (based on the Nordic Model), in particular to better take quality objectives into account in a national discussion.

The arguments for such administrative separation from the Executive are generally the improvement of the independence and the effectiveness of justice.

Indeed, there is a second interesting trend: the increasing separation of the judicial camp and the administrative camp within the judicial system, and also at court level, delimiting their respective roles.

The role of manager is more and more important. The head of courts and heads of sections have seen their role evolving from that of “manager judge” to “judge manager”. But some countries have also created functions of managers under the authority of the ministry or Council for the Judiciary⁵¹. In the Netherlands, the “director of the court” is a member of the board of the court⁵² and the entire board of the court is under supervision of the Council for the Judiciary.

Generally, the reforms seek to find a balance between judicial actors and managerial actors in evaluation. In Finland, the Ministry of Justice only controls the effectiveness objective. The rate of quashing or appeal is not included in the evaluation by the Ministry of Justice. However, it exists in the discussion between the lower court and the Court of Appeal. This means that the quality policy is the responsibility of judges. In the Netherlands, we find also an interesting division between the evaluation of the quality of the organization and management by the Council for the Judiciary and the evaluation of the legal quality by the courts (explicit division explained by the law). In the Hungarian judicial system, one can differentiate between professional and administrative court leaders. Chairs of judicial panels in appellate courts belong to the former group while all the other court leaders exercise administrative competences. Within the latter group there are leaders who are responsible primarily for the professional quality of adjudication. They are the heads of departments. “The other type of administrative leaders is court presidents and deputy presidents who take primarily the task of running the court organization they preside (managerial and administrative issues). All court leaders in the judiciary must be a judge (with the exception of the deputy president of the NOJ who can be other court employee). There are no professional managers amongst court leaders, but managerial trainings are organized for court leaders at the Hungarian Academy of Justice (see-HU 2.3.3.)”

⁵¹ Nevertheless, the importance for the courts president’s credibility to be a judge is explicit.

⁵² In the Netherlands, judges have a role in the management of the court, and there is an administrative court-director.

5.2. Lack of coordination between the Ministry and the High Council for Judges/Judiciary

In this context of governance reforms, there is a regular criticism against the lack of coordination between the Ministry of Justice and the High Council for Judges/for the Judiciary. This leads to the conclusion that the dyadic governance structure is not always an efficient governance structure. This is an interesting trend insofar as the search of relevant structures for judicial management is one of the major issues in democratic countries and the dual structure is considered the best guarantee of independence of justice.

Both in Italy and in the Netherlands, this criticism can particularly be heard insofar as such councils do exist and really have managerial competences. As we have seen before in France, if such bodies do exist and are not in charge of judicial management, the criticism is the same, even if for other reasons. In France, a number of judges claim much managerial competences for the High Council for the Judiciary without ever getting it. In Hungary, dualism exists legally but is reduced in practice by strong centralization. The National Committee of Justices has only a moderate power to check the managerial activity of the President of the NOJ.

So, does this criticism question the value of the dyadic model? Certainly not, but it leads to the belief that this model is not attractive if it serves mainly the objectives of effectiveness and efficiency, without creating a fine balance between judicial independence and accountability.

5.3. Involvement of local and private actors

Above, we have shown that despite some favourable trends – such as establishing communication teams and press officers within courts – there is only a limited interaction between courts and the outside world. We have also found that external perspectives exert only a narrow influence on evaluating courts performance, since user's surveys are not systematically used in most of the countries. These findings indicate that enhancing judicial cooperation with external actors would be desirable.

However, we can see some newly established ways for involving the local actors into the functioning of the judicial organizations. Some of them can certainly be considered as positive developments, while others seem to be rather dangerous practices. In the Netherlands, for example, the participation of local actors is related to the search of a better administration of justice and is little controversial. The tax administration, the social insurance institute, and the public prosecutor's office collaborate regularly with courts members. This is more disturbing in the case of the participation of local actors in the financing of the courts, which has been the case in Italy even if in very rare cases and even if the external resources have been used for only financing innovation projects or specific best practices project. This could be disturbing in the area of court management. In France, the creation of the « Courts Councils »⁵³ illustrates the increasing role of political/administrative authorities and civil society in judicial management. The creation of Courts councils must be handled with care as stated by several French experts worried about the independence of justice. In particular, the French judges' unions claimed that the main difficulty arises from the invitation of State representatives, local authorities and representatives of associations that may be challenged in a case which is handled by the host court. This is the reason why the holding of such a court council in administrative courts is considered impossible in so far as these public authorities are usually defendants in administrative lawsuits.

In Finland such cooperation between courts and local and private actors does not seem to occur, and exist only in sporadic forms in Hungary.

⁵³ According to the code of the judicial organization: “*The Court Council, [...], is a place of exchange and communication between the court and the city. It meets at least once a year. [...] The Court Council is composed of judges and officials of the court [...] and, [...] in particular: 1° Representatives of the prison administration and the judicial protection of youth; 2° Local representatives of the State; 3° Representatives of local and regional authorities and elected parliamentarians in the jurisdiction; 4° persons carrying out a public service mission to the courts; 5° Representatives of the professions of the law; 6° Representatives of associations. This authority has no control over the judicial activity or the organization of the court, nor does it refer to the individual cases before the court*”.

6. Conclusions

The introduction of new evaluation methods in the 2000s were influenced to a great extent by budgetary developments that in their turn influenced themselves changes in governance. The methods of assessing the quality of justice in the five countries cannot be analyzed without taking into account the budgetary context and its administrative implications, as well as the political-administrative evolutions that these evaluation methods implied. The evaluation reforms put more pressure on judges, therefore, governance reforms have been introduced to protect independence.

The trends show also that quality objectives are becoming more and more precise, leading to evaluation mechanisms that are themselves more and more precise but not always relevant.

New criteria for the quality of judges come forward from the analysis. Today judges must not only be aware of their professional environment, but also of the social and economic context of adjudication. These aspects of judicial work are currently reflected in the selection procedures and judicial trainings. However, methods of individual evaluation undergone little change and remain dominated by quantitative indicators. Tools to promote individual quality have also not been so innovated. This contrasts with the criteria for the quality of the judges, which are constantly developing, as has been said. It is interesting to note that the criteria of individual quality are determined in relation to the criteria of the quality of justice. Two decades ago, timeliness was in the center of evaluation of the judicial activity in most countries. Today, adjudication still has to be fast but also to be in phase with society. Thus, judges must be aware of the world around them and expected to be sensitive to the social context of the cases they decide.. It is open then to question whether performance indicators are relevant to this type of criteria, and the comparative analysis unfortunately shows that such indicators, that are targeting the societal aspect of adjudication, are underdeveloped.

The criteria for evaluating the performance of the courts remain highly quantitative, and thus more limited in scope than the individual criteria of quality (even if the quantitative approach is also influential in the latter case). The tools applied to promote the courts quality are mainly managerial, which therefore reflects the perspective of the actors involved in this evaluation. However, innovative tools to promote the quality of courts tend to appear, such as the creation of communication teams inside the courts, the efforts to open courts for the society, and the development of professional standards by judges. These tools are new and need to be tested to see if they are reaching their effectiveness in terms of quality. Moreover, the criteria for determining the quality of a court are much more limited than the individual criteria, which explains why the evaluation methods of courts are more limited too. The criteria are much more quantitative than the individual ones because they are closer to quality objectives of justice at national level, which are themselves often more quantitative than qualitative.

The evaluation of the judicial system is indeed very limited to quantitative objectives and indicators, and ideas for promoting the quality of the system are also very limited. Little innovation has emerged at this level. This certainly explains the development of local quality initiatives that seems to rely no longer on the central level. It should be noted that the evaluation of the judicial system is limited by the budgetary variable, which has an impact on the application of evaluation and promotion methods.

This certainly explains, even if only in part, the innovations in governance, and in particular the demands for more decentralized management, whose primary aim is, on the part of the Judiciary, to develop their independence and effectiveness. The demands for decentralization, or at least for greater participation in management, has met considerable resistance among political and administrative leaders, one of their fears being judicial irresponsibility and establishment of corporatism. Whatever the chosen model of administration, centralized, dyadic or decentralized, the question that is posed in

the five countries concerns the compatibility between the performance of justice and judges, and their independence. This has direct consequences on evaluation methods: how to evaluate the quality of a judge's work without risk of her independence? Taking into account the quashing rate of her decisions is very controversial. But pulling judges out of this kind of evaluation may weaken their accountability.

